



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

DEC 16 2015

Mr. Charles Grisham
Box 31526
San Francisco, CA 94131-0526

RE: Freedom of Information Act (FOIA) Request EPA-R6-2015-009318

Dear Mr. Grisham:

This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency (EPA or Agency) on July 24, 2015, in which you requested all documents that pertain to or shed light upon the substance of a statement made concerning EPA's ongoing review of the Arkansas Pollution Control & Ecology Commission (ADP&EC) Regulation 2, which establishes water quality standards (WQS) for surface waters for the State of Arkansas. The FOIA request specifically refers to a statement made in a February 5, 2015 email where my staff responded to Region 6 Superfund Division staff concerning your interest in speaking to someone concerning the Arkansas's WQS. The email referred to "...a long back-story that cannot be discussed outside the agency." You also requested "all documents that pertain to or shed light upon the substance of the above quoted statement in any way, including legal justification for failing to act as required by statute or regulation and for shielding from public scrutiny, the substance of the 'long back story that cannot be discussed outside the agency' to which the government employee made reference."

The language in your FOIA request can be interpreted either broadly or more narrowly. A broad interpretation would entail an extensive search to identify and review all potentially responsive documents related to the ongoing review of the ADP&EC's most recent amendments to Regulation 2. Such a broad search would require a significant amount of technical staff and attorney time and effort. The EPA has previously denied your fee waiver request for this FOIA request as detailed in Larry Gottesman's July 30, 2015 letter to you. A fee commitment of \$37,000.00 will be needed for the EPA Region 6 to respond to such a broad request.

Given our understanding of your interest is in the Arkwood National Priorities List (NPL) site, a more narrow interpretation of your request may be more appropriate. A narrow interpretation would be limited to documents referring specifically to reasons why the EPA has not acted yet on ADP&EC's amendments to Regulation 2. Based on that interpretation EPA Region 6 has not located any responsive records. Although the FOIA only establishes requirements for disclosure of existing Agency records, given our understanding of your interest in the Arkwood NPL site, the EPA Region 6 offers the following information:

The EPA's progress on the Arkansas triennial submission has been conditioned by the state's revisions to language pertaining to minerals (chloride, sulfate and total dissolved solids). These contaminants have a complex behavior in aquatic ecosystems. The complex and evolving science related to minerals criteria has been a significant factor in the delaying EPA action on Regulation 2 as have related turbidity, depth and compliance provisions. The EPA cannot discuss anticipated conclusions or actions that may be made on new or revised WQS adopted by any state or authorized tribe pursuant to §303(c) of the Clean Water Act with any outside entity. This is in essence, the "long back-story" referred to in the email reply to Region 6 Superfund Division staff.

The Arkwood NPL site has been characterized by contamination by pentachlorophenol (PCP) in ground water; and polynuclear aromatic hydrocarbons (PAHs) and dioxin above health-based levels. Ground water is currently being monitored and treated at New Cricket Spring which forms New Cricket Creek. Neither the draft nor final versions of Regulation 2 contain a change to the Ozark Highland designated use for New Cricket Creek, nor do they include revised criteria for PCP, PAHs and dioxin that would apply to New Cricket Creek. This can be confirmed by looking at the most recent amendments to Regulation 2 which can be found on the ADEQ's website: (http://www2.adeg.state.ar.us/water/branch_planning/wqs_review.htm).

If you disagree with the EPA Region 6 interpretation of your request, you may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request tracking number listed above. For the quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

This is a final response to your request, and you may receive a final billing (if appropriate) from the Regional FOIA Office. If you have any questions concerning this response, you may contact the Regional FOIA Officer, Leticia Lane, who can be reached at (214) 665-7202 or lane.leticia@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "W.K. Honker", is written over the printed name.

William K. Honker, P.E.

Director

Water Division